

State of South Dakota

SEVENTY-SECOND SESSION LEGISLATIVE ASSEMBLY, 1997

529A0546

SENATE ENGROSSED NO. **HB1087** - 2/26/97

Introduced by: Representatives Hunt, Belatti, Brown (Jarvis), Chicoine, Crisp, DeMersseman, Diedrich, Duenwald, Fischer-Clemens, Fitzgerald, Gabriel, Gleason, Hagg, Hassard, Jaspers, Kazmerzak, Koetzle, Koskan, Kredit, Lucas, Madden, Matthews, McNenny, Monroe, Moore, Pederson (Gordon), Putnam, Rost, Schrempp, Smidt, Van Gerpen, Waltman, Weber, Wetz, and Wick and Senators Dunn (Rebecca), Aker, Benson, Drake, Frederick, Hainje, Halverson, Hunhoff, Hutmacher, Johnson (William), Kleven, Kloucek, Lange, Lawler, Reedy, Rounds, Staggers, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain statutes pertaining to abortions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That subdivision (3) of § 34-23A-1 be amended to read as follows:

4 (3) "Parent," one parent of the pregnant minor or the guardian or conservator of the
5 pregnant female;

6 Section 2. That § 34-23A-7 be amended to read as follows:

7 34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female
8 for whom a guardian has been appointed because of a finding of incompetency, until at least
9 forty-eight hours after written notice of the pending operation has been delivered in the manner
10 specified in this section. The notice shall be addressed to the parent at the usual place of abode
11 of the parent and delivered personally to the parent by the physician or an agent. In lieu of such
12 delivery, notice may be made by certified mail addressed to the parent at the usual place of abode

1 of the parent with return receipt requested and restricted delivery to the addressee, which means
2 a postal employee can only deliver the mail to the authorized addressee. If notice is made by
3 certified mail, the time of delivery shall be deemed to occur at twelve o'clock noon on the next
4 day on which regular mail delivery takes place, subsequent to mailing.

5 No notice is required under this section if:

6 (1) The attending physician certifies in the pregnant minor's medical record that, on the
7 basis of the physician's good faith clinical judgment, a medical emergency exists that
8 so complicates the medical condition of a pregnant female as to necessitate the
9 immediate abortion of her pregnancy to avert her death or for which a delay will
10 create serious risk of substantial and irreversible impairment of a major bodily
11 function and there is insufficient time to provide the required notice; or

12 (2) The person who is entitled to notice certifies in writing that he has been notified; or

13 (3) ~~The pregnant minor declares, or provides information that indicates, that she is an~~
14 ~~abused or neglected child as defined in § 26-8A-2 and the attending physician has~~
15 ~~reported the alleged or suspected abuse or neglect as required in accordance with~~
16 ~~§§ 26-8A-3, 26-8A-6, and 26-8A-8. In such circumstances, the department of social~~
17 ~~services, the state's attorney and law enforcement officers to whom the report is made~~
18 ~~or referred for investigation or litigation shall maintain the confidentiality of the fact~~
19 ~~that she has sought or obtained an abortion and shall take all necessary steps to ensure~~
20 ~~that this information is not revealed to her parents~~ A pregnant female elects not to
21 allow the notification of her parent or guardian or conservator, in which case, any
22 judge of a circuit court shall, upon petition, or motion, and after an appropriate
23 hearing, authorize a physician to perform the abortion if the judge determines that the
24 pregnant female is mature and capable of giving informed consent to the proposed
25 abortion. If the judge determines that the pregnant female is not mature, or if the

1 pregnant female does not claim to be mature, the judge shall determine whether the
2 performance of an abortion upon her without notification of her parent, guardian, or
3 conservator would be in her best interests and shall authorize a physician to perform
4 the abortion without such notification if the judge concludes that the pregnant female's
5 best interests would be served thereby.

6 Section 3. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 In any proceeding pursuant to subdivision 34-23A-7(3), the pregnant female may participate
9 in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for
10 her. The court shall, however, advise her that she has a right to court-appointed counsel and
11 shall, upon her request, provide her with such counsel. Proceedings in the court under this
12 subdivision shall be confidential and shall be given such precedence over other pending matters
13 so that the court may reach a decision promptly and without delay so as to serve the best
14 interests of the pregnant female. A judge of the court who conducts proceedings under this
15 subdivision shall make in writing specific factual findings and legal conclusions supporting the
16 decision and shall order a record of the evidence to be maintained including the judge's own
17 findings and conclusions.

18 An expedited confidential appeal shall be available to any such pregnant female for whom the
19 court denies an order authorizing an abortion without notification. An order authorizing an
20 abortion without notification is not subject to appeal. No filing fees are required of any such
21 pregnant female at either the trial or the appellate level. Access to the trial court for the purposes
22 of such a petition or motion, and access to the appellate courts for purposes of making an appeal
23 from denial of the same, shall be afforded such a pregnant woman twenty-four hours a day, seven
24 days a week. Notwithstanding any other provision of law, all pleadings, papers, and other
25 documents filed pursuant to this section are confidential, are not public records, and are not open

1 for inspection by any member of the public for any purpose.

2 Section 4. That § 34-23A-10.2 be amended to read as follows:

3 34-23A-10.2. A physician who, knowingly or in reckless disregard, violates § 34-23A-2.1,
4 34-23A-7, or 34-23A-10.1 is guilty of a Class 2 misdemeanor. The court in which a conviction
5 of a violation of § 34-23A-2.1, 34-23A-7, or 34-23A-10.1 ~~or~~ occurs shall report such conviction
6 to the board of medical and osteopathic examiners.

7 No penalty may be assessed against the female upon whom the abortion is performed or
8 attempted to be performed. No criminal penalty or civil liability for failure to comply with
9 subsection 34-23A-10.1(2)(c) or that portion of subsection 34-23A-10.1(3) requiring a written
10 certification that the woman has been informed of her opportunity to review the information
11 referred to in subsection 34-23A-10.1(2)(c) may be assessed unless the department of health has
12 made the printed materials available at the time the physician or ~~his~~ the physician's agent is
13 required to inform the female of her right to review them.

14 Section 5. That § 34-23A-22 be amended to read as follows:

15 34-23A-22. If any ~~abortion occurs which is not in compliance with~~ person performs an
16 abortion willfully, wantonly, or maliciously in disregard to § 34-23A-2.1, 34-23A-7, or
17 34-23A-10.1, the person upon whom such an abortion has been performed, and the parent of a
18 minor child upon whom such an abortion was performed, or any of them, may maintain an action
19 against the person who performed the abortion ~~for~~ not to exceed ten thousand dollars in punitive
20 damages ~~and treble whatever actual damages the plaintiff may have sustained~~. Any person upon
21 whom such an abortion has been attempted may maintain an action against the person who
22 attempted to perform the abortion ~~for~~ not to exceed five thousand dollars in punitive damages
23 ~~and treble whatever actual damages the plaintiff may have sustained~~.

24 If judgment is rendered in favor of the plaintiff in any such action, the court shall also render
25 judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If

1 judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was
2 frivolous ~~and~~ or brought in bad faith, the court shall also render judgment for a reasonable
3 attorney's fee in favor of the defendant against the plaintiff.

1 **BILL HISTORY**

2 1/27/97 First read in House and referred to Judiciary. H.J. 150

3 2/5/97 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 315

4 2/10/97 Deferred to another day, AYES 53, NAYS 13. H.J. 397

5 2/11/97 House of Representatives Do Pass Amended, Passed, AYES 62, NAYS 5. H.J. 420

6 2/12/97 First read in Senate and referred to Judiciary. S.J. 416

7 2/21/97 Scheduled for Committee hearing on this date.

8 2/21/97 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 591

9 2/25/97 Motion to Amend, Passed.

10 2/25/97 Senate Do Pass Amended, Passed, AYES 32, NAYS 1.